

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Luther Garner, #322156,)	
)	C/A No. 4:15-2209-MBS
Plaintiff,)	
)	
vs.)	ORDER
)	
Monty Enzor and Ryan Nolon,)	
)	
Defendants.)	
_____)	

At the time of the underlying events, Plaintiff Luther Garner was an inmate at the Lee County Correctional Institution (LCCI) in Bishopville, South Carolina. Defendant Monty Enzor is alleged to be an employee of Federal Express. Defendant Ryan Nolon is alleged to be head of security at LCCI. Plaintiff, proceeding pro se and in forma pauperis, filed a complaint on June 1, 2015, asserting that a manuscript was forwarded to him on or about April 25, 2014, but was not received by him. Plaintiff contends the box containing the manuscript was lost or stolen by employees of Federal Express or LCCI. Plaintiff seeks the production of his manuscript and damages for pain and suffering. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III for pretrial handling.

The Magistrate Judge reviewed the complaint pursuant to 28 U.S.C. § 1915A. On August 4, 2015, the Magistrate Judge issued a Report and Recommendation in which he construed Plaintiff's complaint as brought pursuant to 42 U.S.C. § 1983. The Magistrate Judge determined that Defendant Enzor did not act under color of state law, which is a jurisdictional prerequisite to a § 1983 civil rights action. The Magistrate Judge further found that Plaintiff's claim at best sounded in negligence, which is not cognizable under § 1983. Accordingly, the Magistrate Judge recommended that the case be summarily dismissed without prejudice and without issuance and service of process. Plaintiff

filed no response to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. For the reasons stated herein and in the Report and Recommendation, the complaint is summarily dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina

September 10, 2015